

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Verizon New England, Inc. d/b/a Verizon Massachusetts)	
For Arbitration of Interconnection Agreements between Competitive)	D.T.E. 04-33
Local Exchange Carriers and Commercial Mobile Radio Service)	
Providers in Massachusetts Pursuant to Section 252 of the)	
Communications Act of 1934, as amended, and the <u>Triennial Review</u>)	
<u>Order</u>)	

BRAHMACOM's RESPONSE TO VERIZON's PETITION FOR ARBITRATION

Pursuant to section 252(b)(3) of the Telecommunications Act of 1996 ("Act"), BrahmaCom, Inc. ("BrahmaCom") hereby files this response to Verizon's Petition for Arbitration, dated February 20, 2004. Verizon has petitioned the Department to arbitrate amendments to its interconnection agreements with BRAHMACOM (and all other CLECs) proposed by Verizon on October 2, 2003 to implement changes in Verizon's obligations resulting from rules adopted by the Federal Communications Commission ("FCC") in its *Triennial Review Order* ("TRO").

PRELIMINARY MATTERS

BRAHMACOM reserves its rights to argue in this proceeding that Verizon has independent obligations under state law and/or section 271 of the Act to provide the network elements that are the subject of the proposed TRO Attachment and that those obligations should be set forth in the parties' interconnection agreement.

DISCUSSION

I. Section 6 of Verizon's Proposed Interconnection Amendment is Unilateral and is Not Acceptable.

Section 6 of the Verizon's Proposed TRO Interconnection Agreement is unilateral and should be rejected. Section 6 states:

6. Stay or Reversal of the TRO. Notwithstanding any contrary provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, nothing contained in the Agreement, this Amendment, or any Verizon tariff or SGAT shall limit Verizon's right to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the [***State Commission TXT***], the FCC, any court or any other governmental authority related to, concerning or that may affect Verizon's obligations under the Agreement, this Amendment, any Verizon tariff or SGAT, or Applicable Law. The Parties acknowledge that certain provisions of the TRO are presently on appeal to the United States Court of Appeals for the District of Columbia Circuit (the "D.C. Circuit"), and that a Writ of Mandamus relating to the TRO is presently pending before the D.C. Circuit. Notwithstanding any other change of law provision in the Agreement, this Amendment, or any Verizon tariff or SGAT, should the D.C. Circuit or the United States Supreme Court issue a stay of any or all of the TRO's provisions, any terms and conditions of this Amendment that relate to the stayed provisions shall be suspended, and shall have no force and effect, from the effective date of such stay until the stay is lifted. Should the D.C. Circuit or the United States Supreme Court reverse any or all of the TRO's provisions, then any terms and conditions of this Amendment that relate to the reversed provisions shall be voidable at the election of either Party.

Section 6 is needlessly one-sided. It recognizes Verizon's right to appeal but not the CLEC's.

Some aspects of the TRO were appealed by the CLECs and those appealed portions may be accepted by the Supreme Court, or changed by the FCC on remand. Verizon's proposed terms could be construed as ignoring the results of any CLEC appeal. In addition, the section does not provide for the CLEC to purchase UNEs during the stay, or after a reversal of some part of the TRO. Given the likelihood of an extended court dispute with respect to the TRO, the CLEC's ability to purchase UNEs should not be interrupted until the final adjudication.

II. Section 1.1 of Verizon's Proposed Amendment, General Conditions, TRO Amendment Does Not Recognize Section 271 Obligations.

Section 1.1 of the Verizon TRO Attachment does not acknowledge the obligations of Section 271 of the Act should be rejected. Section 1.1 states:

1.1 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT: (a) Verizon shall be obligated to provide access to unbundled Network Elements ("UNEs"), combinations of unbundled Network Elements ("Combinations"), or UNEs commingled with wholesale services ("Commingling"), to ***CLEC Acronym TXT*** under the terms of this Amended Agreement only to the extent required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, and, (b) Verizon may decline to provide access to UNEs, Combinations, or Commingling to ***CLEC Acronym TXT*** to the extent that provision of access to such UNEs, Combinations, or Commingling is not required by both 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51.

This paragraph cites section 251 UNEs, but does not recognize its separate Section 271 obligations to provide certain elements. The TRO at ¶ 655 notes, "...BOC obligations under section 271 are not necessarily relieved based on any determination we make under the section 251 unbundling analysis." The right of the Massachusetts DTE to create additional obligations is also removed by Verizon's wording.

III. Sections 1.2 and 1.3 of Verizon's Proposed Amendment, General Conditions, TRO Amendment Ignores the Authority of the Massachusetts DTE.

Sections 1.2 and 1.3 of of Verizon's Proposed Amendment, General Conditions, TRO Amendment state:

1.2 ***CLEC Acronym TXT*** may use a UNE, a Combination, or Commingling only for those purposes for which Verizon is required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 to provide such UNE, Combination, or Commingling to ***CLEC Acronym TXT***.

1.3 Notwithstanding any other provision of the Agreement, this Amendment, or any Verizon tariff or SGAT, to the extent Verizon is required by a change in Applicable Law to provide to ***CLEC Acronym TXT*** pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51 a UNE, a Combination, or Commingling that is not offered under the

Amended Agreement to ***CLEC Acronym TXT*** as of the Amendment Effective Date, the rates, terms, conditions for such UNE, Combination, or Commingling shall be as provided in an applicable Verizon tariff, or, in the absence of an applicable Verizon tariff, as mutually agreed in writing by the Parties.

Section 1.2 does not recognize any additional acceptable purposes that the Massachusetts DTE itself may recognize. In addition, Section 1.3 does not recognize Massachusetts DTE imposed requirements. The effect is to create a nationwide minimum obligation upon Verizon in all states. As such, both sections are unacceptable.

IV. Section 1.4 of Verizon's Proposed Amendment, General Conditions, TRO Amendment Is Unilateral.

Section 1.4 of Verizon's Proposed Amendment, General Conditions, TRO Amendment is unilateral and not acceptable. The proposed amendment states:

1.4 Verizon reserves the right to argue in any proceeding before the [***State Commission TXT***], the FCC or another governmental body of competent jurisdiction that an item identified in the Agreement or this Amendment as a Network Element (a) is not a Network Element under 47 U.S.C. § 251(c)(3), (b) is not a Network Element Verizon is required by 47 U.S.C. § 251(c)(3) to provide to ***CLEC Acronym TXT***, or (c) is an item that Verizon is not required to offer to ***CLEC Acronym TXT*** at the rates set forth in the Amended Agreement.

Like preceding section 1.1, this proposed Verizon amendment is asymmetric. Such a provision should allow the CLEC as well to argue for additional UNE obligations.

V. Section 2.3 ("Dedicated Transport") of Verizon's Proposed Amendment, TRO Glossary, TRO Amendment Ignores the TRO's Reverse Collocation Requirements.

Section 2.3 of Verizon's Proposed Amendment, TRO Glossary, TRO Amendment ignores the TRO's "Reverse Collocation" obligations and should, thus, be rejected. The proposed amendment states:

2.3 Dedicated Transport. A DS1 or DS3 transmission facility between Verizon switches (as identified in the LERG) or wire centers, within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis pursuant to 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51. Transmission facilities or services provided

between (i) a Verizon wire center or switch and (ii) a switch or wire center of ***CLEC Acronym TXT*** or a third party are not Dedicated Transport.

Section 2.3 as proposed is too narrow in addressing the TRO's Dedicated Transport requirements. The TRO has two separate references to "Reverse Collocation" as being a means to acquire dedicated transport. TRO ¶369 refers to the obligation that would impact "backhaul" circuits such as those circuits a CLEC might use to access a remote DSLAM. That obligation is restrictive, limiting reverse collocations to sites where Verizon has local switching gear. However, TRO ¶ 605 creates a separate definition of reverse collocation for the specific purpose of ordering EELs. This latter definition does not require local switching, and is likely to apply in BrahmaCom's service area. Acceptable wording would be to add to the end of the paragraph, "except where Verizon has established collocation at the CLEC wire center."

It should also be noted that in the United States Court of Appeals for the District of Columbia Circuit in *United States Telecom Association v. Federal Communications Commission*, Case No. 00-1012, decided March 2, 2004 ("USTA II") looked askance at the exclusion of entrance facilities, noting (at 47) that "...the Commission's reasoning appears to have little or no footing in the statutory definition..." As such, a narrowly-construed limitation on Dedicated Transport should be viewed as tentative.

VI. Section 2.9 ("Feeder") of Verizon's Proposed Amendment, TRO Glossary, TRO Amendment Omits References to Copper Feeder.

Section 2.9 of Verizon's Proposed Amendment, TRO Glossary, TRO Amendment addressing "Feeder" omits references to copper feeder and should, thus, be rejected. The proposed amendment states:

The fiber optic cable (lit or unlit) or metallic portion of a Loop between a serving wire center and a remote terminal or feeder/distribution interface

This glossary definition passes over copper feeder, as if it did not exist. The TRO does not define "feeder" per se, it merely limits certain use of optical fiber feeder.

VII. Section 2.11 (“House and Riser Cable”) of Verizon’s Proposed Amendment, TRO Glossary, TRO Amendment Narrowly Interprets the TRO.

Section 2.9 of Verizon’s Proposed Amendment, TRO Glossary, TRO Amendment addressing “House and Riser Cable” narrowly construes the TRO’s definition of house and riser cable and should, thus, be rejected. The proposed amendment states:

2.11 House and Riser Cable. A distribution facility in Verizon's network, other than in a FTTH Loop, between the minimum point of entry ("MPOE") at a multiunit premises where an end user customer is located and the Demarcation Point for such facility, that is owned and controlled by Verizon.

This definition is too narrow. TRO footnote 1035, ¶ 347, provides a more expansive definition:

We include within the definition of the subloops for which we require unbundled access, not only the Inside Wire Subloop, but also any other loop-accessible terminal at, or near, a multiunit customer premises where, as a result of the incumbent LEC's network architecture, a requesting carrier may need subloop access to utilize the Inside Wire Subloop or NID to reach the end user.

These subloop unbundling rules seek to encompass the various other network configurations that may occur at a multiunit premises when the demarcation point, the MPOE, and the NID are not all located at the same point, e.g., in the basement utility room of the particular building to be served. The Commission has defined "multiunit premises" in section 68.105 of the rules. See 47 C.F.R. § 68.105 (multiunit premises include but are not limited to, residential, commercial, shopping center and campus situations).

VIII. Section 2.12 (“Hybrid Loop”) of Verizon’s Proposed Amendment, TRO Glossary, TRO Amendment is Not the TRO Definition.

Section 2.12 of Verizon’s Proposed Amendment, TRO Glossary, TRO Amendment defines “Hybrid Loop” but not as it is defined in the TRO. The proposed amendment states:

2.12 Hybrid Loop. A local Loop composed of both fiber optic cable and copper wire or cable.

This definition is not the one in the TRO; it is more appropriate to simply copy or cite TRO ¶ 51.319(a)(2), which reads, "A hybrid loop is a local loop composed of both fiber optic cable, usually in the feeder plant, and copper wire or cable, usually in the distribution plant."

IX. Section 2.16 ("Nonconforming Facility") of Verizon's Proposed Amendment, TRO Glossary, TRO Amendment Does Not Account for State ordered UNEs Considered Conforming.

Section 2.16 of Verizon's Proposed Amendment, TRO Glossary, TRO Amendment fails to take into account state-ordered UNEs considered conforming. Nor does the definition consider Section 271 UNE obligations. Moreover, final wording may need to be revised in light of the Remand, Stay, and eventual appeals and changes made under remand, after appeal. As such, a more generalized wording, by reference, may be more appropriate.

X. Section 2.22 ("Subloop Distribution Facility") of Verizon's Proposed Amendment, TRO Glossary, TRO Amendment is Too Narrow in Its Definition.

Section 2.22 of Verizon's Proposed Amendment, TRO Glossary, TRO Amendment fails to take too narrowly limits access to the feeder/distribution interface. The Verizon section states:

2.22 Sub-Loop Distribution Facility. The copper portion of a Loop in Verizon's network that is between the minimum point of entry ("MPOE") at an end user customer premises and Verizon's feeder/distribution interface.

The Verizon proposed definition is far too narrow; it limits access to the feeder/distribution interface. The TRO itself, at TRO ¶254, explains: "We define the copper subloop UNE as the distribution portion of the copper loop that is technically feasible to access at terminals in the incumbent LEC's outside plant (i.e., outside its central offices), including inside wire. We find that any point on the loop where technicians can access the cable without removing a splice case constitutes an accessible terminal. As HTBC points out, a non-exhaustive list of these points

includes the pole or pedestal, the serving area interface (SAI), the NID itself, the MPOE, the remote terminal, and the feeder/distribution interface. To facilitate competitive LEC access to the copper subloop UNE, we require incumbent LECs to provide, upon a site-specific request, access to the copper subloop at a splice near their remote terminals."

XI. Section 3.1.1 ("Hi-Cap Loops") of Verizon's Proposed Amendment, UNE TRO Provisions, TRO Amendment Omit References to State or Section 271 Obligations.

Section 3.1.1 of Verizon's Proposed Amendment, UNE TRO Provisions, TRO Amendment fails to take into account the Commonwealth of Massachusetts or federal Section 271 obligations. Section 3.1.1.3 also lacks a reasonable transition period once a finding of nonimpairment is made.

XII. Section 3.1.3.4 ("Feeder") of Verizon's Proposed Amendment, UNE TRO Provisions, TRO Amendment Omits TRO ¶253 Requirements

Section 3.1.3.4 of Verizon's Proposed Amendment, UNE TRO Provisions, TRO Amendment does not conform to TRO ¶253 and should be rejected. The section states:

3.1.3.4 Feeder. Notwithstanding any other provision of the Agreement or any Verizon tariff or SGAT, as of October 2, 2003, ***CLEC Acronym TXT*** shall not be entitled to obtain access to the Feeder portion of a Loop on an unbundled, standalone basis.

The FCC withdrew TELRIC availability to fiber feeders feeding a CLEC-owned remote terminal, in the TRO. However, at TRO ¶253, the FCC replaced this with a separate obligation to provide fiber feeders under Section 201 rates: "Specifically, we expect that incumbent LECs will develop wholesale service offerings for access to their fiber feeder to ensure that competitive LECs have access to copper subloops. Of course, the terms and conditions of such access would be subject to sections 201 and 202 of the Act."

XIII. Section 3.2.1 (“Line Sharing”) of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment Warrants Clarification.

Section 3.2.1 of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment warrants clarification. This section does not mention line splitting, which was preserved by the TRO. The section also lacks mention of the TRO's requirements, at ¶¶271 and ¶¶281-284, concerning retirement of copper loops.

XIV. Section 3.2.1.1 (“New Line Sharing”) of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment Should Not Require Separate Agreements.

Section 3.2.1.1 of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment should not require a separate agreement to continue using transitional line-sharing. The section provides:

3.2.1.1 New Line Sharing. Verizon shall be under no obligation to provision new Line Sharing arrangements under the Agreement or this Amendment; provided, however, that as and to the extent required by 47 U.S.C. § 251(c)(3) and 47 C.F.R. Part 51, Verizon shall provide new Line Sharing arrangements on a transitional basis pursuant to rates, terms, and conditions offered by Verizon in a separate agreement that shall be subject to FCC-prescribed pricing rules.

This proposed term requires a separate agreement in order to continue using the transitional line-sharing rates that the FCC specified. This should not be required.

XV. Section 3.3.1.1 (“Inside Wire Sub-Loop”) of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment Is Not As Flexible as the TRO.

Section 3.3.1.1 of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment has unnecessarily specific wording on where inside wire can be accessed. The TRO itself is more flexible, and 51.319(b)(2) grants more general rights:

“The subloop for access to multiunit premises wiring is defined as any portion of the loop that it is technically feasible to access at a terminal in the incumbent LEC's outside plant at or near a multiunit premises. One category of this subloop is inside wire, which is defined for purposes of this section as all loop plant owned or controlled by the incumbent LEC at a multiunit customer premises between the minimum point of entry as

defined in § 68.105 of this chapter and the point of demarcation of the incumbent LEC's network as defined in § 68.3 of this chapter.”

XVI. Section 3.4 (“Unbundled Local Circuit Switching”) of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment Fails to Meet the TRO Transition Obligations.

Section 3.4 of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment regarding “Unbundled Local Circuit Switching” contains no reference to Section 271 obligations. It also fails to meet the transition obligations, particularly as noted in TRO ¶531, which involves the state commissions:

The evidence in the record demonstrates that state commissions have a strong interest in creating the conditions for transition from service using unbundled local circuit switching to unbundled stand-alone loops wherever possible, and managing the transition in a way that promotes investment as well as continued choice for consumers. We therefore require competitive and incumbent LECs to jointly submit the details of their implementation plan to the appropriate state commission. In addition, we require competitive LECs to notify the relevant state commissions when they have submitted their orders for migration. Finally, we require incumbent LECs to notify the relevant state commission when they have completed the migrations.

XVI. Section 3.5.2.1 (“Dedicated transport”) of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment Does Not Address Reverse Collocation.

Section 3.5.2.1 of Verizon’s Proposed Amendment, UNE TRO Provisions, TRO Amendment regarding “Dedicated Transport” fails to account for reverse collocation, as discussed above for Section 1.5. There may also be a need for clarification concerning Point of Interconnection circuits; the TRO discusses UNEs for "backhaul" and EELs, but explicitly allows Point of Interconnection to be at the CLEC location. Since these trunks, between the CLEC location and the Verizon-IP (e.g., Verizon tandem or end office, at which point fiscal, but not physical, handoff occurs) are sometimes provisioned as UNEs, that usage needs to be preserved here. We suggest "with the exception of transmission facilities used for the purpose of a CLEC's interconnection network" be inserted before "; and (b)" in the above paragraph.

XVII. Section 3.6.2.2 (EEL Eligibility) of Verizon's Proposed Amendment, UNE TRO Provisions, TRO Amendment is not Correct and Should be Rejected.

Section 3.6.2.2 of Verizon's Proposed Amendment, UNE TRO Provisions, TRO Amendment regarding EEL eligibility criteria should be rejected because of numerous inaccuracies. The section states:

3.6.2.2. Each written certification to be provided by ***CLEC Acronym TXT*** pursuant to Section 3.6.2.1 above must contain the following information for each DS1 circuit or DS1 equivalent: (a) the local number assigned to each DS1 circuit or DS1 equivalent; (b) the local numbers assigned to each DS3 circuit (must have 28 local numbers assigned to it); (c) the date each circuit was established in the 911/E911 database; (d) the collocation termination connecting facility assignment for each circuit, showing that the collocation arrangement was established pursuant to 47 U.S.C. § 251(c)(6), and not under a federal collocation tariff; (e) the interconnection trunk circuit identification number that serves each DS1 circuit. There must be one such identification number per every 24 DS1 circuits; and (f) the local switch that serves each DS1 circuit. When submitting an ASR for a circuit, this information must be contained in the Remarks section of the ASR, unless provisions are made to populate other fields on the ASR to capture this information.

Verizon's proposed section on EELs contains numerous flaws. It should not be included at all in the amendment: EEL eligibility is described in 51.318, and a single reference should be sufficient. CLECs should simply be required to certify that their orders conform to 51.318.

Verizon has also asked CLECs that sign the TRO Amendment to certify these items individually with specific references on every ASR used to order EELs. This is an unduly burdensome requirement, particularly in light of the Verizon's requirements list being more stringent than the TRO itself.

In Items (a) and (b), of the Verizon proposed section, a local phone number is required to be in place when the circuit is placed into service. The local number will often be ported from an existing number, and thus not belong to the CLEC until the circuit is turned up, tested and porting is completed a minimum of 7 days after testing the circuit on the customer's premises equipment. In addition, Item (b) requires 28 local numbers when a DS3 is turned up. If the DS3

EEL is used to support multiple customers, its channels might not all be activated at the time the DS3 is turned up, and therefore 28 local numbers will not have been assigned yet. This is admittedly ambiguous from the wording of 51.318, but the TRO at ¶599 states, "...for arrangements where DS1 loops are multiplexed onto DS3 transport facilities, each DS1 loop that subtends the DS3 transport must qualify in order to obtain the transport at a UNE price." This restriction is rational, to prevent an IOF from being used for both qualifying and non-qualifying purposes. But when a DS1-equivalent channel does not yet have any loop attached to it, because it is spare, requiring a telephone number would meet no rational end, and indeed could only serve to worsen pressure on numbering plan resources by requiring the issuance of gratuitous numbers.

Verizon proposed Item (d) of the section fails to account for reverse collocation, especially important in that EELs are subject to the liberal interpretation of reverse collocation as defined in the TRO (footnote 1843: "Letter from Steven A. Augustino, Counsel for SNiP LiNK, to William Maher, Bureau Chief, Wireline Competition Bureau, FCC, CC Docket Nos. 01-338, 96-98, 98-147 at 1 (filed Feb. 5, 2003). This definition would include the installation of incumbent LEC equipment at the premises of a competitive LEC or any other entity not affiliated with that incumbent LEC, regardless of whether the incumbent LEC has a cage.") and 51.318 by reference to a SNiP LiNK interconnect agreement in Pennsylvania.

Moreover, Verizon proposed Item (e) does not at all comporting with the TRO. The requirement of 51.318(b)(2)(vi) is: "For each 24 DS1 enhanced extended links or other facilities having equivalent capacity, the requesting telecommunications carrier will have at least one active DS1 local service interconnection trunk that meets the requirements of paragraph (d) of this section...." This establishes a ratio of at least 1:24 between interconnection trunks and DS1

EELs. The TRO itself at ¶607 says, "... for every 24 DS1 EELs or the equivalent, the requesting carrier must maintain at least one active DS1 interconnection trunk for the exchange of local voice traffic." Interconnection trunks are not assigned to specific circuits. By the very nature of being a trunk, any and every interconnection trunk on the switch is normally established for the use of all subscriber lines on the switch. There is no direct relationship between specific interconnection trunks and specific EELs. Clearly, this proposal is not related to how the core of the T1 business actually operates.

XVIII. Section 3.7.2. (Performance Plans) of Verizon's Proposed Amendment, UNE TRO Provisions, TRO Amendment Proposes Performance Relief Not Permitted by the TRO.

Section 3.7.2 of Verizon's Proposed Amendment, UNE TRO Provisions, TRO Amendment allows Verizon to not be subject to performance measures or remedies:

3.7.2 Performance Plans. Verizon's performance in connection with the provisioning of Loops or Transport (including Dark Fiber Transport) for which routine network modifications are necessary shall not be subject to standard provisioning intervals, or to performance measures and remedies, if any, contained in the Amended Agreement or elsewhere.

There is no general relief afforded in the TRO for conformance to performance assurance plans.

This proposed amendment should simply be stricken.

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